

**Robert G. Lopez**

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New York, New York 10002  
(917) 868-1698

December 26, 2018

**HAND-DELIVERED**

Hon. Edgardo Ramos  
United States District Court  
Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, New York 10007

**Re: Robert G. Lopez v. True Religion Sales, LLC, et al.**

**Civil Action No. 18-CV-10595 (ER)**

Dear Judge Ramos:

I am the pro se Plaintiff in the above-identified action.

I am writing in response to Mr. Shimanoff's December 26, 2018 letter to Your Honor.

I begin by noting that I take offense to Mr. Shimanoff labeling me a "serial *pro se* plaintiff" in view of my previous litigation pursuits against those who have violated my intellectual property rights.

In fact, and to the contrary, I am a small business owner who has been in a rare position to aggressively enforce my intellectual property rights against third party companies and individuals who have attempted to exploit my trademarks and copyrights in connection with the sale and advertising of apparel for a profit.

As an officer of the Court, Mr. Shimanoff submitted speculative statements to Your Honor and falsely suggested that I spend a significant amount of time trolling the Internet for third party uses of my trademarks. He also made speculative statements under a hypothetical theory and scenario of how and why he thinks I reach a resolution of the infringement cases I have previously filed.

RECEIVED  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
DEPT. OF PROSECUTION  
12/26/2018 9:19 AM  
S.D.N.Y.  
18-CV-10595 (ER)

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Mr. Shimanoff has no evidence to substantiate these false allegations and I can inform Your Honor that in connection with the current action, I have not had any settlement discussions with The Endurance International Group, Inc.

I can inform Your Honor that I previously commenced a trademark infringement action against Endurance in the case *Robert G. Lopez v. The Endurance International Group, Inc., et al.* 17 CV 04774 (LGS) so Endurance was certainly aware of my ownership rights in my LOWER EAST SIDE™ and LES NYC® trademarks in connection with clothing.

As stated in Mr. Shimanoff's correspondence to the Court, I did indeed forward an infringement notice to Endurance on November 25, 2018, prior to filing my First Amended Complaint in the current action.

On November 26, 2018, Endurance responded to my infringement notice and stated “...after reviewing the facts and circumstances provided in your notice, we are unable to locate and/or confirm the validity of the infringement claim. Accordingly, your notice fails to meet the minimum requirements of the Digital Millennium Copyright Act (“DMCA”)...”. (See Exhibit A).

Plaintiff notes that his infringement notice was for “trademark infringement” **NOT** “copyright infringement,” so the rules for notices under the DMCA were not applicable to the notice of infringement in connection with this action and in essence, Endurance’s response suggested that it would not take any further action unless I submitted a proper DMCA notice.

In view of the aforementioned email response from Endurance, I was left with little alternative than to file my First Amended Complaint that added Endurance as a Defendant to the current action. Endurance’s response, in my interpretation suggested that it would continue to supply its web hosting services to www.yellowratbastard.com that it had information and reason to know that it was engaging in infringing activities against my trademarks thereby making Endurance liable for contributory trademark infringement.

At the time of Plaintiff filing his First Amended Complaint in this action, Endurance was indeed still providing hosting services to the website www.yellowratbastard.com.

Indeed Paragraph 124 of Plaintiff’s FAC specifically alleges, “Defendant EIG is inducing the infringement of Plaintiff’s LOWER EAST SIDE™ and/or LES NYC® marks by continuing to provide online store and hosting services to ecommerce store under the website www.yellowratbastard.com that it knows to be engaged in infringing activities against Plaintiff’s trademarks.”

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Paragraph 126 of Plaintiff's FAC also alleges Defendant EIG is liable for direct, vicarious and contributory trademark infringement of Plaintiff's **LOWER EAST SIDE™** and **LES NYC®** trademarks.

It is Plaintiff's position that the Tiffany v. EBay case and the other cases cited by Mr. Shimanoff are not applicable as the facts and circumstances of those cases are NOT analogous with the facts and circumstances of the current case.

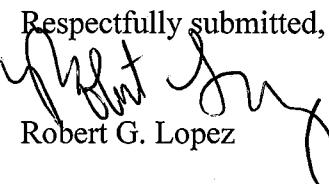
It is also Plaintiff's position that his claims are not precluded by the fair use doctrine, and Plaintiff intends to vigorously oppose any intended motion to dismiss under any of the grounds set forth in Mr. Shimanoff's correspondence to the Court.

The question as to whether Endurance acted expeditiously after being put on notice of the infringement is a question of fact that should not lend itself to a motion to dismiss.

Plaintiff is not aware of any case law or statute that legally prevents him from commencing an action for infringement within 24 hours of forwarding an infringement notice, especially to a party involved in the infringement that responds and suggests that your notice is not in compliance with a DMCA notice despite it being a trademark related dispute.

In any case, I look forward to attending any pre-motion conference that the Court may order to address and further discuss Endurance's intended motion to dismiss.

I thank Your Honor for his attention to this matter.

Respectfully submitted,  
  
Robert G. Lopez

**EXHIBIT A**



Robert G Lopez <lesclothing@gmail.com>

## RE: Fwd: Infringement Notice [ ref: \_00D36qEW6.\_5001QiFSDI:ref ]

legal@bluehost.com <legal@bluehost.com>  
To: "lesclothing@gmail.com" <lesclothing@gmail.com>

Mon, Nov 26, 2018 at 2:09 PM

Hello,

Thank you for contacting the Compliance Department.

We take any notice of a potential intellectual property infringement seriously. However, after reviewing the facts and circumstances provided in your notice, we are unable to locate and/or confirm the validity of the infringement claim. Accordingly, your notice fails to meet the minimum requirements of the Digital Millennium Copyright Act ("DMCA"). Specifically, the following items are missing:

Pursuant to Section 512 of the Digital Millennium Copyright Act ("DMCA"), to properly notify us of an infringement of your copyright, you need to provide the following information:

- i) The name, address, phone number, email address (if available) and physical or electronic signature of the copyright owner or a person authorized to act on the copyright owner's behalf;
- ii) Identification of the copyrighted work(s);
- iv) A statement that you have a good faith belief that use of the disputed material is not authorized by the copyright owner, its agent or the law; and
- v) A statement that the information in the complaint is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

If you wish to resubmit your claim, pursuant to our policy and the DMCA, we request that complainants provide a takedown notice that contains all of the information required by the DMCA. The requirements for this notice are listed in our Terms of Service at [http://www.bluehost.com/cgi/info/copyright\\_claims\\_policy](http://www.bluehost.com/cgi/info/copyright_claims_policy) or you may also find a form to fill out on the Internet via a web search for ""DMCA takedown form.""

Upon receipt of a completed copy of the takedown form, we will act expeditiously to address your claim. If we do not hear from you further, we will assume that this matter is resolved.

Regards,  
Compliance Department

----- Forwarded message -----  
From: Robert G Lopez <lesclothing@gmail.com>  
Date: Sun, Nov 25, 2018 at 7:51 PM  
Subject: Infringement Notice  
To: <legal@endurance.com>

Dear Sir/Madam:

Please see the attached infringement notice regarding a violation of my intellectual property rights.

All rights and remedies are expressly reserved.

--  
Robert G. Lopez  
L.E.S. Clothing Co.™

**Loyalty Equals Strength™**  
**(917) 868-1698**  
**www.lesclothing.com**



Virus-free. www.avg.com

ref: 00D36qEW6\_5001QiFSDI:ref